

### **REMARKS**

Applicants request reconsideration of this application in view of the present Amendment.

#### **Claim Objections**

Claims 2-18 and 20-38 have been amended to exhibit consistent punctuation and capitalization.

#### **35 U.S.C. § 112**

Claims 13 and 31 have been rejected under 35 U.S.C. § 112 for including the term:

$$r_c(1-P_c/P_b)^{\text{exp}}$$

As shown above, claims 13 and 31 have been amended to make the case of the variable " $R_c$ " consistent with the formula found in the specification at page 27. As amended, claims 13 and 31 particularly point out and distinctly claim the subject matter of the invention.

#### **35 U.S.C. § 102(e)**

Claims 1-12, 15-30, and 33-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Johnson et al. (U.S. Pat. No. 6,005,925).

Claim 1 recites endowing one or more bidding entities with an adjustably fixed amount of utility, wherein the fixed amount of utility is a measure representative of the possibility of failure due to lack of resources. Claim 1 further recites the negotiation of the supply of services of the holding entities, with each bidding entity bidding a selected amount of the fixed amount of utility. Johnson does not teach or suggest either (1) endowing one or more bidding entities with an adjustably fixed amount of utility, wherein the fixed amount of utility is a measure representative of the possibility of failure due to lack of resources, or (2) negotiation of the supply of services of the holding entities, with each bidding entity bidding a selected amount of the fixed amount of utility.

The most Johnson can be said to disclose is an automated bidding moderation system in which telecommunications carriers submit price bids for transmitting communications to at least

one subscriber who makes routing decisions based on the available communications paths and the price bid for each of the communications.

The method of claim 1, in contrast to Johnson, endows one or more bidding entities with an adjustably fixed amount of utility, wherein the fixed amount of utility is a measure representative of the possibility of failure due to lack of resources. By redistributing the supply of the holding entities among the bidding entities based on a negotiation, the supply is appropriately allotted amongst the bidding entities. When the negotiation is based on the selected amount of the fixed amount of utility bid by each entity, the selected amount corresponds to a prediction of the amount of service needed to achieve the entities' goal. As noted on page 11, lines 10-17, the prediction is based on the possibility of the failure of the resource to be available the instant the resource is required. This possibility of failure can be balanced against the price the entity must pay. Thus, the charge to the entity for the resource does not only include the quantity of resource used, but also includes the possibility that the resource will be unavailable or removed. This idea is reiterated on page 6, lines 11-21.

Further, the method of claim 1, also in contrast to Johnson, recites the negotiation of the supply of services of the holding entities, with each bidding entity bidding a selected amount of the fixed amount of utility. The negotiation considers the importance of a utility to each bidding entity by examining the amount of the fixed amount of utility the entity selects and allots a portion of the supply of services to the bidding entity. In a case where the fixed amount of utility endowed to a bidding entity and/or the selected amount of the fixed amount of utility are relatively low, the portion of the supply of services negotiated for by the bidding entity can be inadequate to meet the bidding entity's requirement. At the same time, for another bidding entity that has been endowed with a relatively high fixed amount of utility and bids a relatively large amount of the fixed amount of utility for the supply of services, the method can provide a larger allotment of the supply of services and/or a greater guarantee of the availability of the supply of services.

Claim 1 thus recites elements that are neither taught nor suggested by Johnson and is, therefore, not anticipated by Johnson under 35 U.S.C. § 102(e). Claims 2-18 depend from claim 1 and are, therefore, also not anticipated by Johnson under 35 U.S.C. § 102(e).

Claim 19 discloses similar limitations to claim 1 that are neither taught nor suggested by Johnson and is, therefore, also not anticipated by Johnson under 35 U.S.C. § 102(e). Claims 20-36 depend from claim 19 and are, therefore, also not anticipated by Johnson under 35 U.S.C. § 102(e).

**35 U.S.C. § 103(a)**

Claims 13-14 and claims 31-32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnson et al. (U.S. Pat. No. 6,005,925).

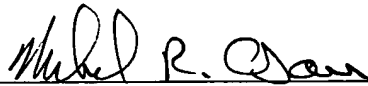
A prima facie case of obviousness cannot be maintained for claims 13-14 in view of that discussed above for claim 1. Several elements of claim 1 are neither taught nor suggested by Johnson and, therefore, claim 1 cannot be considered obvious over Johnson. Claims 13 and 14 depend from claim 1 and, therefore, also recite those elements of claim 1 that are neither taught nor suggested by Johnson. Thus, claims 13 and 14 also cannot be made obvious by Johnson.

Similarly, a prima facie case of obviousness cannot be maintained for claims 31-32 in view of that discussed above for claim 19. Claim 19 recites several elements that are neither taught nor suggested by Johnson and, therefore, claim 19 cannot be considered obvious over Johnson. Claims 31 and 32 depend from claim 19 and, therefore, also recite those elements of claim 19 that are neither taught nor suggested by Johnson. Thus, claims 31 and 32 also cannot be made obvious by Johnson.

**Conclusion**

Applicants respectfully submit that the amendments and remarks presented herein overcome the outstanding rejections and place the application in condition for allowance and allowance is requested. The Examiner is invited to call the undersigned if a telephone call would help resolve any remaining issues.

Respectfully submitted,



Michael R. Asam

Reg. No. 51,417

Jones Day  
North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114  
(216) 586-7770



Application Serial No.: 09/611,054  
Attorney Docket No.: 481340010023

*[Faint, illegible handwritten text]*

**Appendix B**

**Marked-up Replacement Figure 7A Indicating Changes**

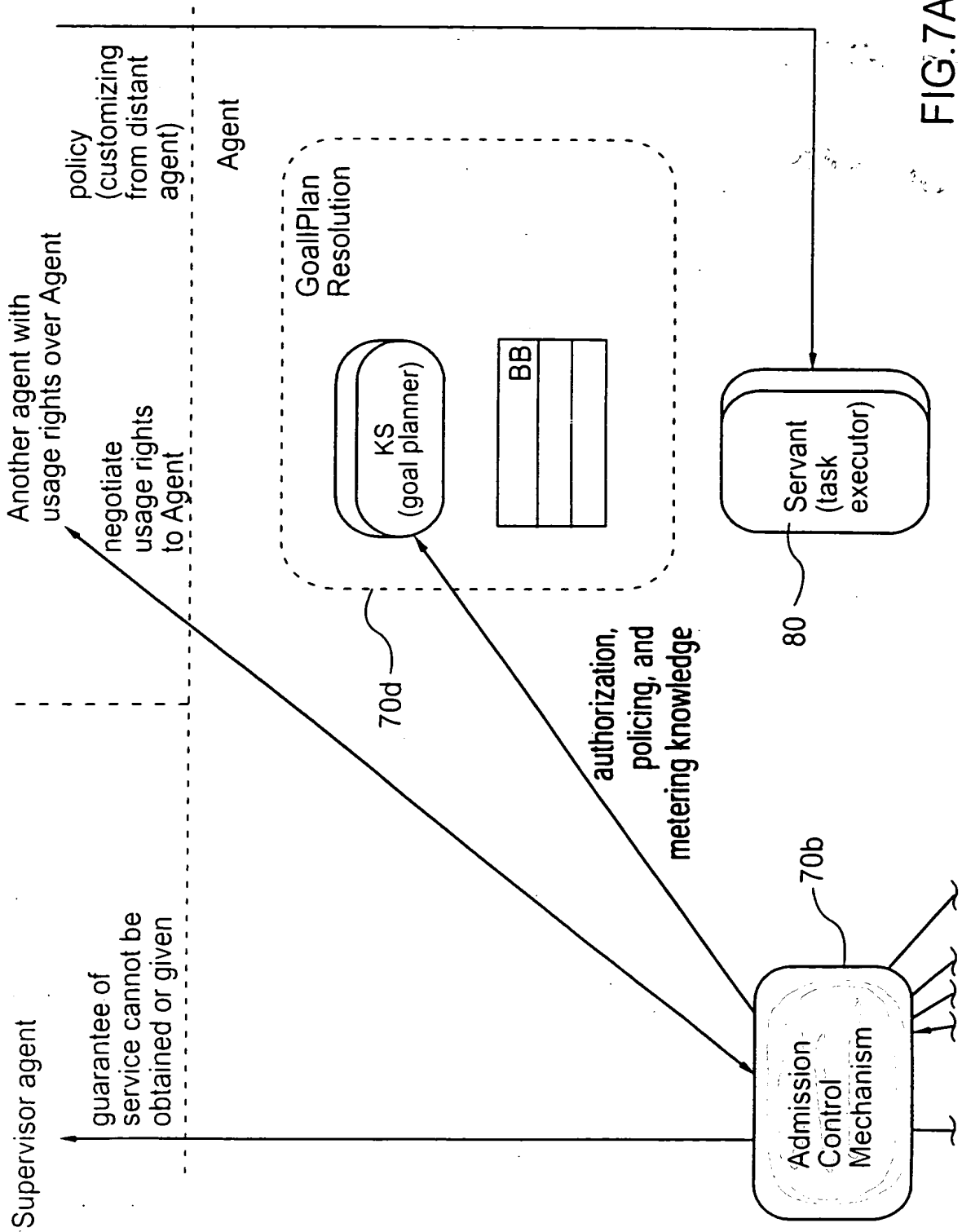


FIG.7A